

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1028267-D3 AND
ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Warren Anthony TEBO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1823

Warren Anthony TEBO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 31 October 1969, an Examiner of the United States Coast Guard at New Orleans, La., suspended Appellant's seaman documents for twelve months upon finding him guilty of misconduct. The specifications found proved allege that while serving as an AB seaman on board SS ZOELLA LYKES under authority of the document above captioned, Appellant:

- (1) on or about 30 September 1969, was unable to stand his 12-4 watch by reason of being under the influence of liquor;
- (2) on or about 1 October 1969, absented himself from the vessel without authority at Nagoya, Japan; and
- (3) on or about 2 October 1969, was unable to perform duties by reason of intoxication when the vessel was "being shifted from Nagoya and Yokohama, Japan."

At the hearing, Appellant elected to act as his own counsel. The Appellant pleaded not guilty to the first specification; the Examiner entered pleas of not guilty to the other specifications.

The Investigating Officer introduced in evidence voyage records of ZEOLLA LYKES. Appellant offered no defense.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of twelve months.

The entire decision was served on 11 December 1969. Appeal was timely filed on 9 January 1970.

FINDINGS OF FACT

On all dates in question, Appellant was serving as an AB seaman on board SS ZEOLLA LYKES and acting under authority of his document.

On 30 September 1969, Appellant was on watch from 0000 to 0400 when, at 2100, he was detected by the third mate to be under influence of liquor. Appellant was dismissed from the watch.

On 1 October 1969, Appellant was absent from the vessel at Nagoya, Japan, without permission.

On 2 October 1969, when the vessel was being shifted from Nagoya to Yokohama, Appellant was unable to stand his 0400-0800 watch by reason of being under the influence of liquor.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It contended that Appellant was sick at the time of the offense.

APPEARANCE: Appellant, pro se.

OPINION

Appellant's grounds for appeal may be dealt with in summary fashion. He claims on appeal that he was "sick" on the occasions of the acts of misconduct alleged. He did not raise this defense when he was before the master for "logging." More importantly, he did not raise this defense before the Examiner when he was brought to hearing. I quote the dialogue from the record when Appellant was given the opportunity to present his defense:

"EXAMINER: You want to come up here and tell me your side of the case?

"MR. TEBO: I'll stand up right here.

"EXAMINER: All right. Raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you, God?

"MR. TEBO: The whole truth, and on the Bible. Decide for yourself.

"EXAMINER: You tell me your side of it.

"MR. TEBO: Forget it. Decide for yourself.

"EXAMINER: Well, you don't want to say anything, is that right?

"MR. TEBO: Right." R-7

I may pass over here the apparently contemptuous activity of Appellant before the Examiner. The point is that I will not consider on any appeal matters not raised before an Examiner, except offers of "newly discovered evidence." 46 CFR 137.25-1(b). Such offers, of course, are not for purposes of appeal but for reopening of hearings.

Since Appellant did not raise the question of "sickness" before the master of the vessel and never raised it before the Examiner, there is nothing for me to consider on the appeal.

ORDER

The order of the Examiner dated at New Orleans, La., on 31 October 1967, is AFFIRMED.

T. R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 1st day of October 1970.

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